

IN THE UNITED STATES DISTRICT COURT

THE EASTERN DISTRICT OF OKLAHOMA

Kyle Joseph Vannortwick,

PETITIONER,

V.

UNITED STATES OF AMERICA,

RESPONDENT(S).

CASE # CR

**FILED**

DEC 12 2022

**22 CIV 357 JFH**

BONNIE HANFELER  
Clerk, U.S. District Court

By By

Deputy Clerk

MOTION UNDER 28 U.S.C. §2241 for §3584 and §5G1.3

Motions for actions challenging the calculation of State/Federal overlapping terms in sentencing, primarily in matters where the State Offense is related to the Federal conviction. The flexibility of the addition of §5G1.3, to which the FBOP has no part, thus Administrative Remedy process is inapplicable, with the §3584, renders the possibility of concurrent sentencing which can be back-dated to an earlier sentence, if required, to generate a sentence in concert with 18 U.S.C. §3553(a) factors. Since 28 U.S.C. §2241 is for 'duration of sentence' arguments, it is the one applicable to Motions challenging §5G1.3 and §3584 calculations.

§3584 MULTIPLE SENTENCES OF IMPRISONMENT

(A) Imposition of concurrent or consecutive terms. If multiple terms of imprisonment are imposed on a defendant at the same time, or if a term of imprisonment are imposed on a defendant who is already subject to an undischarged term of imprisonment, the terms may run;

Concurrently or consecutively,

except that the terms may not run consecutively for an attempt and for another offense that was the sole objective of the attempt. Multiple terms of imprisonment imposed at the same time run concurrently unless the Court orders or the statute mandates that the terms are to run consecutively. Multiple terms of imprisonment imposed at different times are run consecutively unless the Court orders that the terms are to run concurrently.

Sentences may run concurrent in part, or in full, or from a prior date of conviction or arrest [Nun Pro Tunc]. The sentences in this matter are: date of Arrest on February 18th, 2018

and up until sentencing on July 7th, 2022

§5G1.3 Imposition of Sentence on a Defendant Subject to an Undischarged Term of Imprisonment.

- (a) If the instant offense was committed while the defendant was serving a term of imprisonment (including work release, furlough, or escape status), or after sentencing for, but before commencing service of, such a term of imprisonment, the sentence for the instant offense shall be imposed to run consecutively to the undischarged term of imprisonment.
- (b) If subsection (a) does not apply, and a term of imprisonment resulted from another offense that is relevant to the instant offense of conviction under the provisions of subsection (a)(1), (a)(2) or (a)(3) of 1B1.3 (Relevant Conduct), and that was the basis for an increase in the offense level for the instant offense under Chapter Two, (Offense Conduct), or Chapter Three, (Adjustments), the sentence for the instant offense shall be imposed as follows:
  - (1) The Court shall adjust the sentence for any period of imprisonment already served on the undischarged term of imprisonment if the Court determines that such period of imprisonment will not be credited to the Federal sentence by the Bureau of Prisons; and
  - (2) The sentence for the instant offense shall be imposed to  
  
**RUN CONCURRENTLY TO THE REMAINDER OF THE UNDISCHARGED TERM OF IMPRISONMENT.**
- (c) (Policy Statement). In any other case involving an undischarged term of imprisonment, the sentence for the instant offense may be imposed to run concurrently, partially concurrently, or consecutively to prior undischarged term of imprisonment to achieve a reasonable punishment for the instant offense.

Construction and Applications of the United States Sentencing Guidelines §5G1.3(b), requiring Federal Sentence to RUN CONCURRENTLY TO UNDISCHARGED STATE SENTENCE, when State sentence has been fully taken into account in determining offense level for Federal Offense - Requirements for Application and Determination Applicable Version of Sentencing Guidelines. 11ALR Fed.2d 119.

Drake, 49 F.3d 1438, 1440 (9th Cir. 1995); (Use of §5G1.3 is 'not under the Attorney General's authority, [FBOP].') "Application of Section §5G1.3(b) is a matter for the Court, not the Bureau of Prisons, to decide."

Massey, 2020 US Dist. LEXIS 48606 (7th Dist.);

Holloman, 635 Fed. Appx. 12 (3rd Cir. 2015);

Nelson, 982 F.3d 1141 (8th Cir. 2020);

Maxie, 647 Fed. Appx. 551 (6th Cir. 2016);

Tillman, 822 Fed. Appx. 897 (5th & 11th Cir. 2020)(quoting Pugh, 515 F.3d 1179, 1189 (11th Cir. 2008)(quoting Gall, 552 US 38, 51(S.Ct. 2007)). Here, the relevant Sentencing Guideline provides that if 'a state term of imprisonment is anticipated to result from another offense that is relevant conduct to the instant offense of conviction...the sentence for the instant offense shall be imposed to run concurrently to the anticipated term of imprisonment. U.S.S.G. §5G1.3(c)."

Cartek, 2013 US Dist. LEXIS 161768 (11th Dist.) "[Petitioner] is correct that, had the district judge wished to do so, he could have imposed a federal sentence that was to run concurrently with his existing state sentence: 18 U.S.C. §3584(a); U.S.S.G. §5G1.3."

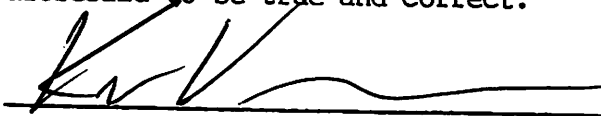
Meaning that a District Judge has the authority to: create a Federal sentence that runs completely concurrent with an already running state sentence. He has the discretion to create a Federal term that is completely concurrent with an already running State term, a 'backdate' if you will, should it be established that the relevant conduct was from the same event, and structure what the District Judge feels is an appropriate composite sentence under 18 U.S.C. §3553(a) factors.

The dates in contention are from February, 18th, 2018 until July, 7th, 2022. The Bureau of Prisons will not credit these dates, and under §5G1.3, has no authority to do so, thus Administrative Remedy within the Federal Bureau of Prisons is not applicable to this Motion, being an entirely Court function. Petitioner seeks full concurrency for his relevant conduct arising from the same original incident.

I, Kyle Joseph Vannortwick hereby certify under penalty of perjury pursuant to Title 28 U.S.C. §1746 the aforesaid to be true and correct.

November 28th, 2022

Dated :

  
Signature

GREAG 540*23 *	SENTENCE MONITORING	*	09-14-2022
PAGE 001 *	COMPUTATION DATA	*	14:30:26
	AS OF 09-14-2022		

REGNO...: 04340-509 NAME: VANNORTWICK, KYLE JOSEPH

FBI NO.....: 391172LC1	DATE OF BIRTH: 10-09-1984	AGE: 37
ARS1.....: GRE/A-DES		
UNIT.....: H1	QUARTERS.....: A07-224U	
DETAINERS.....: NO	NOTIFICATIONS: NO	

FSA ELIGIBILITY STATUS IS: INELIGIBLE

THE FOLLOWING SENTENCE DATA IS FOR THE INMATE'S CURRENT COMMITMENT.

HOME DETENTION ELIGIBILITY DATE.....: 12-21-2033

THE INMATE IS PROJECTED FOR RELEASE: 06-21-2034 VIA GCT REL

-----CURRENT JUDGMENT/WARRANT NO: 010 -----

COURT OF JURISDICTION.....: OKLAHOMA, EASTERN DISTRICT  
DOCKET NUMBER.....: CR-20-00062-001-RAW  
JUDGE.....: WHITE  
DATE SENTENCED/PROBATION IMPOSED: 07-07-2022  
DATE COMMITTED.....: 08-15-2022  
HOW COMMITTED.....: US DISTRICT COURT COMMITMENT  
PROBATION IMPOSED.....: NO

	FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED.:	\$100.00	\$00.00	\$00.00	\$00.00

RESTITUTION...: PROPERTY: NO SERVICES: NO AMOUNT: \$00.00

-----CURRENT OBLIGATION NO: 010 -----

OFFENSE CODE.....: 721 18:1111 HOMICIDE MURDER FSA INELIGIBLE  
OFF/CHG: 18:1111(A), 1151, & 1153 MURDER IN INDIAN COUNTY 2ND DEGREE

SENTENCE PROCEDURE.....: 3559 PLRA SENTENCE  
SENTENCE IMPOSED/TIME TO SERVE.: 216 MONTHS  
TERM OF SUPERVISION.....: 5 YEARS  
DATE OF OFFENSE.....: 02-18-2018

G0002 MORE PAGES TO FOLLOW . . .

GREAG 540*23 *	SENTENCE MONITORING	*	09-14-2022
PAGE 002 OF 002 *	COMPUTATION DATA	*	14:30:26
	AS OF 09-14-2022		

REGNO...: 04340-509 NAME: VANNORTWICK, KYLE JOSEPH

-----CURRENT COMPUTATION NO: 010 -----

COMPUTATION 010 WAS LAST UPDATED ON 09-09-2022 AT DSC AUTOMATICALLY  
COMPUTATION CERTIFIED ON 09-09-2022 BY DESIG/SENTENCE COMPUTATION CTR

THE FOLLOWING JUDGMENTS, WARRANTS AND OBLIGATIONS ARE INCLUDED IN  
CURRENT COMPUTATION 010: 010 010

DATE COMPUTATION BEGAN.....: 07-07-2022  
TOTAL TERM IN EFFECT.....: 216 MONTHS  
TOTAL TERM IN EFFECT CONVERTED...: 18 YEARS  
EARLIEST DATE OF OFFENSE.....: 02-18-2018

JAIL CREDIT.....:	FROM DATE	THRU DATE
	02-18-2018	05-08-2018
	05-09-2019	07-06-2022

TOTAL PRIOR CREDIT TIME.....: 1235  
TOTAL INOPERATIVE TIME.....: 0  
TOTAL GCT EARNED AND PROJECTED...: 972  
TOTAL GCT EARNED.....: 162  
STATUTORY RELEASE DATE PROJECTED: 06-21-2034  
ELDERLY OFFENDER TWO THIRDS DATE: 02-18-2031  
EXPIRATION FULL TERM DATE.....: 02-17-2037  
TIME SERVED.....: 3 YEARS 6 MONTHS 28 DAYS  
PERCENTAGE OF FULL TERM SERVED...: 19.8  
PERCENT OF STATUTORY TERM SERVED: 23.2

PROJECTED SATISFACTION DATE.....: 06-21-2034  
PROJECTED SATISFACTION METHOD....: GCT REL

G0000 TRANSACTION SUCCESSFULLY COMPLETED

Kyle J. Vannortwick 04340509

FT Greenville

Po box 5000

Greenville, Illinois 62246

Bonnie Hackler

Us Court Clerk

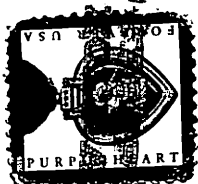
Eastern District of Oklahoma

Po Box 607

Muskogee, Oklahoma 74402

SAINT LOUIS MO 630

8 DEC 2022 PM 10 L



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